of fact it was not. *Murray* v. *Preston,* 106 Ky. 561, 50 S. W. 1095, 90 Am. St. Rep. 232. The legislature of a state may determine whether a stream shall be considered a public highway or not, yet if it is not one the legislature cannot make it one by a simple declaration that it is one, since it is private property which the legislature cannot appropriate to a public use without compensation. COOLEY'S CONSTITUTIONAL LIMITATIONS, Ed. 5, p. *591; *Walker* v. *Board of Public Works,* 16 Ohio 540; *Olive* v. *State,* 86 Ala. 88, 5 South. 653, 4 L. R. A. 33; *Yates* v. *Milwaukee,* 10 Wall. 497, 19 L. Ed. 984. Owners cannot be deprived of property rights without compensation by artificial additions to the waters of a stream whereby it is rendered navigable. *Thunder Bay Booming Co.* v. *Speechly,* 31 Mich. 336, 18 Am. Rep. 184; *Druley* v. *Adam,* 102 Ill. 177. The navigability of a stream is to be determined with reference to its natural condition. *Hall* v. *Lacey,* 3 Grant. Cas. (Pa.) 264; *U. S.* v. *Rio Grande Dam & Irrigation Co.,* 174 U. S. 690, 19 Sup. Ct. 770, 43 L. Ed. 1136; *In re The Daniel Ball,* 10 Wall. 557, 19 L. Ed. 999.

CONTRACTS.—PERFORMANCE OF BUILDING CONTRACT.—The plaintiff, a building contractor, engaged to duplicate a certain dwelling house for the defendant but before the painting had been begun the house was destroyed by fire without the fault of either party. In an action for the price of the house, failure of performance was interposed as a defense. *Held,* that the painting was an essential part of an inseverable contract and that the house was not completed ready for delivery before its destruction. *Annis* v. *Saugy* (1909), — R. I, —. 74 Atl. 81.

To entitle a contractor to recover upon a contract, inseverable in its nature, and which has not been strictly performed, it must appear either that there was an honest attempt to complete the contract according to its specifications, resulting in a substantial performance with only some slight deviations as to some particulars provided for, *or,* that there was an assent or acceptance, express or implied. *Jennings* v. *Camp,* 13 Johns 94; *Taft* v. *Montague,* 14 Mass. 282; *Kettle* v. *Harvey,* 21 Vt. 301; *Helm* v. *Wilson,* 4 Mo. 41; *White* v. *Oliver,* 36 Me. 92; *Elliott* v. *Caldwell,* 43 Minn. 357. Although there has not been sufficient performance to permit a recovery on the contract, still, in some instances, a recovery on a *quantum meruit* or *quantum valebant* is permitted where the benefits of such part performance have been accepted. *Hayward* v. *Leonard,* 7 Pick. 181; *Smith* v. *First Congregational Meeting House,* 8 Pick. 178; *Snow* v. *Ware,* 13 Metc. 42; *Lord* v. *Wheeler,* 1 Gray 282; *Aetna Iron and Steel Co.* .v *Kossuth County,* 79 Iowa 40; *Gallagher et al.* v. *Sharpless,* 134 Pa. St. 134. This theory of recovery has been extended to inseverable contracts of service under the authority of *Britton* v. *Turner,* 6 N. H. 481 and *Jordan* v. *Fitz,* 63 N. H. 227, but it has found but little favor in other states. See *Eldridge* v. *Rowe,* 2 Gilm. 91; *Olmstead* v. *Beale,* 19 Pick. 528; *Wooten* v. *Read,* 2 Smed. & M. 585.

CORPORATIONS.—CAPITAL STOCK.—TRUST FUND.—RIGHT OF BANK TO PURCHASE ITS OWN STOCK.—A solvent stockholder in an insolvent bank delivered to the president of the bank his shares of stock in the bank in payment